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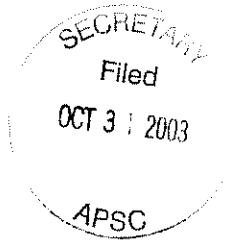
October 31, 2003



VIA HAND DELIVERY

Walter Thomas, Secretary
Alabama Public Service Commission
RSA Union Building, 8th Floor
100 North Union Street
Montgomery, Alabama 36104

RE: Petition for a Declaratory Order Regarding Classification of IP Telephony Service, Docket No. 29016

Dear Mr. Thomas:

Enclosed please find an original and ten (10) copies of MCImetro Access Transmission Services, LLC and MCI WORLDCOM Communications, Inc., Comments of MCI to be filed in the above-referenced docket number.

Thank you for your assistance in this matter. Should you have any questions, please do not hesitate to contact me.

Very truly yours,

Peter S. Fruin

PSF:brr
enclosures

BEFORE THE
ALABAMA PUBLIC SERVICE COMMISSION

In re: Petition for a Declaratory Order Regarding Classification of IP Telephony Service	)))	**Docket No. 29016**

COMMENTS OF MCI

Pursuant to the Order Establishing Declaratory Proceeding issued in this Docket on August 29, 2003, MCImetro Access Transmission Services, LLC and MCI WORLDCOM Communications, Inc. ("MCI") file these Comments regarding voice service over the Internet Protocol ("VoIP").

I. THE COMMISSION SHOULD REFRAIN FROM ASSERTING JURISDICTION OVER THIS NEW TECHNOLOGY.

By way of background, it may be helpful to examine briefly the technological basis for VoIP. The Internet is actually a number of "backbone" facilities that have websites attached to them and are connected by way of peering arrangements. Data is transmitted over the Internet via Internet Protocol (IP), which breaks down the information into individual "packets," routes the traffic over the backbone and reassembles it at the terminating end. Although the Internet initially was designed to transmit data, the technology has been developed that will convert voice signals into IP packets and transmit these signals over Internet backbone or other networks, whether based on IP, Frame Relay, Asynchronous Transfer Mode (ATM) or other network protocols.

VoIP involves the use of the public or private Internet during at least part of the transmission process, but may also utilize "media gateway" devices to convert voice signals to and/or from the IP protocol to the traditional Time Domain Multiplexing (TDM) protocol used throughout the Public Switched Telephone Network ("PSTN"). VoIP should be viewed as utilizing an emerging set of technologies that enables integrated new services, including audio, data, and video collaboration, over IP- based networks.

VoIP is difficult to define precisely because of the different facilities that may be used in the transmission process and the variety of products and services that can be provided based on this exciting new technology. VoIP is carried, in part, over the Internet and not entirely over the PSTN. Further, VoIP may use a combination of the PSTN and other facilities to provide services, as well as offering VoIP services that are "on-net" and are not provided at all over the PSTN.

For example, the MCI "Advantage" product provides business customers with the opportunity to obtain access to the PSTN through the customer's LAN or WAN facilities. These facilities are also used for customer-specified data needs, thereby allowing the customer to more efficiently utilize his or her leased facilities. More importantly, the customer can interact with network-based value added capabilities to greatly expand service opportunities and control communications of various types, such as voice, messaging and data. MCI Advantage customers will be able to completely manage their own networks through the use of enhanced Customer Premises Equipment, taking advantage of the standards-based Session-Initiated Protocol (SIP) on which the MCI Advantage is based.

Additionally, a "SIP" telephone provides the end user with the ability to implement feature changes that, with circuit switched-based telephony, only can be accomplished through switch changes performed by the carrier. For example, SIP technology would allow an end user to program call forwarding to a particular telephone number for a particular business meeting. An apt analogy depicting the difference between services based on POTs technology and the MCI Advantage product would be riding the bus versus driving a car. Taking a bus to work accomplishes the transportation function, but the rider must follow the established route and predetermined stops, at prescribed times, set by the bus company. On the other hand, driving one's own car allows the flexibility to choose the route to work, the time for the commute, and a host of other individual details (stopping to get coffee). It is this type of innovation that MCI is able to offer its customers, along with the inherent efficiencies of using the same network for all types of communications. However, MCI cannot address the uses being made of VoIP technology by other providers, nor can any prediction be accurately made as to the future products and services that can be developed using this technology.

MCI recommends that instead of immediately attempting to "fit" VoIP into the statutory or regulatory framework of traditional voice service, the Commission should first take a broader view of this nascent technology from a policy standpoint. One of the most important goals of the Telecommunications Act of 1996 is to promote new technology and allow new technologies to take hold. New technology is best driven by competitors striving to meet consumers' needs in a market environment, because history has proven that monopolies have little, if any, incentive to compete.

As evidenced by MCI's product offering, VoIP is an evolving set of technology and services that is a necessary component of an evolving integrated IP infrastructure that will provide enhanced data, audio, and video customer applications. Innovative applications based on IP technology will bring the world from the 20th to the 21st century. Thus, it is absolutely critical that VoIP not be saddled with archaic regulations of the past, and that the state commissions and the FCC work together in developing a regulatory scheme that will allow VoIP to develop to its fullest potential. To that end, MCI encourages the Commission to refrain from adopting specific regulatory rules at least until VoIP-related matters are addressed by the FCC. This will give the Commission additional time to develop a more extensive record in this proceeding, and to monitor the progress of VoIP-based products as they are rolled out throughout Alabama.

Taking a "wait and see" approach to the regulation of this innovative technology is consistent with the approach taken by the FCC early on with respect to the classification of enhanced service providers, including ISPs, as providers of information services and users of telecommunications services. See, *e.g. MTS and WATS Market Structure,* Memorandum Opinion and Order, 97 FCC 2d 682 (1983); *In re Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers,* CC Docket No. 88-215, 3 F.C.C. R. 2631 (1988); *In re Amendment of Section 64.702 of the Commission's Rules and Regulations ("A Second Computer Inquiry")*, 77 F.C.C. 2d 384 (1980), *on recon.*, 84 F.C.C. 2d 50 (1980), *further recon.*, 88 F.C.C.2d 512, *aff'd sub. nom. Computer & Communications Indus. Ass'n v. F.C.C.*, 693 F.2d 198 (D.C.Cir. 1982).

The FCC properly credits its policy of excluding ISPs and other information service providers from the access charge regime with aiding in the rapid growth of the online world, and eventually the Internet itself, *Access Charge Reform,* First Report and Order, 12 F.C.C. Rcd. 15982, par. 344 (1997).

Although the FCC has not specifically addressed the regulatory scheme applicable to VoIP, the universal service aspects of services offered over the Internet were discussed in *Federal-State Joint Board on Universal Service,* Report to Congress, 13 F.C.C. Rcd. 11,501 (1998) (*"Universal Service Report"*). In that Report, the FCC, while tentatively deeming "phone-to-phone" services as "telecommunications services" for universal service purposes, concluded, at ¶ 90, that:

> "We do not believe, however, that it is appropriate to make any definitive pronouncements in the absence of a more complete record focused on individual service offerings. As stated above, we use in this analysis a tentative definition of 'phone-to-phone' IP telephony. Because of the wide range of services that can be provided using packetized voice and innovative CPE, we will need, before making definitive pronouncements, to consider whether our tentative definition of phone-to-phone IP telephony accurately distinguishes between phone-to-phone and other forms of IP telephony, and is not likely to be quickly overcome by changes in technology. We defer a more definitive resolution of these issues pending the development of a more fully-developed record because we recognize the need, when dealing with emerging services and technologies in environments as dynamic as today's Internet and telecommunications markets, to have as complete information and input as possible."

See also id. at 11,623 (Powell, Commissioner, concurring)(distinctions between voice and data are "difficult if not impossible to maintain" and a decision to impose traditional regulation on "innovative new IP services" could "stifle innovation and competition in direct contravention of the Act").

The FCC also held, at ¶ 91, that the end user status of information services extends to all forms of Internet technology services, noting that the question whether to subject phone-to-phone IP telephony services to the access charge regime is a "difficult and contested issue" to be faced in the future.

AT&T has requested that the FCC consider the appropriate intercarrier compensation scheme for Internet telephony in *Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, DA 02-3184, filed on October 18, 2002. In its petition, AT&T asserted that certain ILECs are refusing to terminate AT&T's VoIP traffic over local business lines, or over reciprocal compensation trunks provided by CLECs. Apparently, these ILECs have taken the position that this kind of Internet traffic is "really" interexchange voice traffic that, in their view, should be subject to access charges, despite the FCC's clear directives that online and Internet traffic should not bear the burden of participating in an inefficient and non-cost based access charge regime. MCI has joined with AT&T in urging the FCC to promptly resolve the important policy question of how to regulate Internet voice services, and more generally how intercarrier compensation should be treated for all services provider. At a minimum, MCI has asked the FCC to grant AT&T's request for a ruling that would maintain the status quo that Internet telephony not be subject to the access charge regime until such issues are addressed.

Thus, having taken a "wait and see" position in the *Universal Service Report*, based on the state of the record at that time, it now appears likely that the FCC will soon rule on some of the regulatory issues raised by this Commission's investigation in this

case. The prudent course for the Commission at this point would be to "wait and see" how the FCC decides the issues.[1]

As discussed above, MCI believes that the time is not ripe for the Commission to consider a state regulatory framework for VoIP. It is possible that the FCC will find that the integration of voice service with data transmission using IP protocol is an enhanced service offering that, along with other Internet-based products, should continue to be unregulated. Furthermore, in light of the significant consumer benefits that are being developed, it is crucial that such innovation not be discouraged by a regulatory scheme that is burdensome and based on monopoly concepts.

The public interest does not require Commission regulatory oversight of VoIP. As noted above with respect to MCI's Advantage product, the emerging VoIP-based services will give customers control of their own individualized networks through the use of special equipment. Regulatory incentives to encourage high quality and efficient service, largely unnecessary for competitive services under any circumstances, certainly have no place in a world where customers need not order feature changes, for example, from the service provider, but simply program them into the network.

To the extent that the Commission views public safety to be a concern raised by this new technology, *e.g.*, access to 911, MCI suggests that these concerns be addressed through industry workshops. The MCI Advantage, and other evolving VoIP-based services, can support access to 911 by customers. A recent report to the FCC concluded that the ILECs' 911 infrastructure is outdated and that if future 911 networks were based on emerging protocols such as SIP, significant new service capabilities for 911 providers

[1] The recent decision in *Vonage Holdings Corp. v. Minnesota Public Utilities Commission*, No. 03-5287, slip op. (D. Minn. Oct. 16, 2003), enjoining the Minnesota Public Service Commission from regulating Vonage's VoIP service, also counsels in favor of this approach.

would be facilitated. There simply is no need to bring about the full panoply of regulation for matters that the industry has already recognized and addressed. Indeed, issues such as 911 are matters that the Commission could investigate during the "wait and see" period that MCI has suggested in these comments.

II. TO THE EXTENT THAT THE COMMISSION TAKES ANY ACTION WITH RESPECT TO VoIP, IT SHOULD BE TO REFORM THE INTERCARRIER COMPENSATION PROBLEMS THAT EXIST IN THE CURRENT MARKET

The "issue" related to compensation mechanisms with respect to VoIP technology is really a symptom of a larger problem – that regulatory policies concerning compensation for communications services are structurally flawed and provide perverse signals to the market given today's technological and competitive environment. Specifically, the current intercarrier compensation regime is untenable, inequitable, is increasingly anti-competitive, and harms the public interest in a number of ways.

The dispute over VoIP among carriers is nothing more than a compensation issue, because the Incumbent Local Exchange Carriers ("ILECs") want to charge switched access charges to this type of traffic. The FCC's current policy does not allow the ILECs to assess switched access charges on Internet traffic. Consistent with this policy, VoIP is an unregulated information service, like Internet access or email. This means that VoIP providers are end users, not common carriers, and thus not required to pay carrier access charges. Instead, VoIP providers can purchase the originating and termination connections they need from local carriers, like any other retail end-user, such as IBM or the local neighborhood cleaners. The FCC has concluded that it is sound public policy to allow this nascent, innovative form of communications to develop without having to bear the burden of participating in an inefficient and non-cost-based access charge regime.

Any other rule, if applied to VoIP or any other IP application, would be tantamount to a tax on the Internet, which the FCC has opposed. As clearly stated in its *Report to Congress*, all VoIP offerings are exempt from all access charges both originating and terminating.

It should come as no surprise that the ILECs want to assess switched access rates on this new technology. The ILECs' desire to assess high switched access rates for VoIP communications represents nothing more than a tax on competitors and competing technologies. The compensation debate thus illustrates the disparate treatment of intercarrier rates for essentially the same function; the legacy of the existing patchwork of compensation rules. With the bundling of different types of services by innovative carriers and the increasing use of information services, disparate rates based solely on outmoded definitions make little sense. Indeed, only a uniform compensation scheme predicated on economic costs can be sustained and defended as competitively and technologically neutral.

The compensation problem is demonstrated by the different charges assessed by the ILECs on what is technically the same functionality – originating, transporting, and terminating bits of traffic that are destined for or come from another provider. Specifically, different ILECs have different switched access rates, even though there is no reason why the charges should be different. ILECs have different access rates for interstate calls versus intrastate calls with no technical reason for the different rates. Switched access rates are different than reciprocal compensation rates even though the functions are the same. UNE switching is also the same functionality and yet is charged to CLECs at another, different rate.

Importantly, in addition to having a wide range of rates for the same functionality, most of these charges have no basis in actual, economic cost. Now that most of the large ILECs are in the interLATA market, the situation is exacerbated because they are able to levy their above-cost intercarrier compensation charges on their competitors while enjoying cost-based access themselves. Because market forces cannot be relied upon to discipline termination charges, such charges must be based on economic costs.

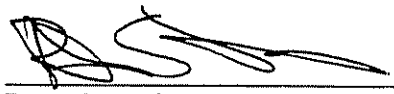
With the passage of the Telecommunications Act of 1996, the nature of the role of the regulator changed. Indeed, regulators are not engaged in rate-of-return ratemaking proceedings, nor are they charged with ensuring ILECs remain "whole" as the competitive process works to change the landscape of how consumers communicate. Regulators are charged with establishing and enforcing policies that encourage market forces to meet consumers' needs in innovative and cost-effective ways. Such policies must embrace the task of regulating bottleneck facilities such as the last mile, because it is through control of such facilities that the ILECs can exercise their substantial market power to the detriment of competition. Such a policy focus would encourage both the introduction of new telecommunications services and technological innovation. Importantly, regulators should not continue policies that provide preferential treatment to ILECs, for example, treating the ILECs as if they are still entitled to the perks that were afforded to them as monopoly providers. Likewise, the current patchwork of intercarrier compensation rules should be revamped so as to eliminate archaic schemes designed to keep ILECs "whole" – schemes implemented during the ILECs' monopolistic reign. Regulators should not be cajoled into applying uneconomically high switched access charges to IP technology, even when applications include audio on either end.

The optimal solution is to discard this outdated patchwork of intercarrier compensation rules for a simple, rational, cost-causative, technology neutral approach. The current intercarrier compensation regime should be reformed substantially such that compensation is based on economic (i.e., market) costs instead of on the basis of artificial constructs such as jurisdiction, market sector or technology of traffic. The key to a rational and sustainable compensation regime is that the chosen methodology applies to *all* traffic regardless of the jurisdiction. Indeed, the goal of reform is to eliminate artificial distinctions among different types of traffic and to create a uniform intercarrier compensation regime such as a single cost based per-minute charge for call termination, or single cost-based rate per connection charge, or bill-and-keep. Moreover, policymakers must embrace the concept of regulating bottleneck facilities, such as the last mile, not the services themselves.

III. CONCLUSION

MCI is pleased to have this opportunity to discuss its VoIP product and the types of exciting new services that will be brought to the marketplace in the near future. Because of the consumer benefits that are being provided by this service, the Commission is in a unique position to be able to monitor this development without taking an active role in providing the consumer safeguards necessary for services that still have monopoly characteristics. The Commission is encouraged to work with the FCC, and other state commissions, so that providers are not hampered by a patchwork of regulation that varies substantially from jurisdiction to jurisdiction.

Respectfully submitted, this 31st day of October, 2003.



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CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing document on the following by placing same in the United States Mail, postage prepaid and properly addressed on this the 31st day of October 2003.

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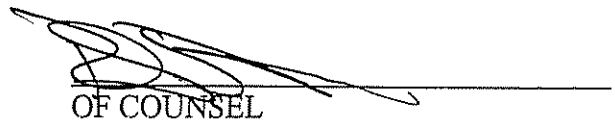

OF COUNSEL